

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Application No.:	09/872,300	§	Examiner:	Burgess, Barbara N.
Filed:	May 31, 2001	§	Group/Art Unit:	2157
Inventor(s):		§	Atty. Dkt. No:	5150-46100
Andrew Thomson		§		
		§		
		§		
Title:	SYSTEM AND METHOD	§		
	FOR PROVIDING	§		
	NETWORK INTERFACES	§		
	TO INSTRUMENTS	§		
	WITHOUT NETWORKING	§		
	CAPABILITIES	§		
		§		

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**REPLY BRIEF**

Sir or Madam:

Further to the Examiner's Answer of June 25, 2008, Appellant presents this Reply Brief, and respectfully requests that this Reply Brief be considered by the Board of Patent Appeals and Interferences.

## **STATUS OF CLAIMS**

Claims 82-106 are pending in the case. Claims 82-106 stand rejected under 35 U.S.C. § 102(e) and claims 93 and 97 stand rejected under 35 U.S.C. § 112. Claims 82-106 are the subject of this appeal.

## **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 93 and 97 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Appellant regards as the invention.

Claims 82-106 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Nagaoka et al. (hereinafter “Nagaoka”, US Patent Publication 2002/0180579).

## **ARGUMENTS**

The below is presented in response to the Examiner's Response to Argument in the Examiner's Answer. Appellant respectfully notes that the Examiner's Answer substantially repeats arguments made earlier in the prosecution, which have been addressed in the Appeal Brief. Appellant has presented below responses to any *new* arguments in the Examiner's Answer. Thus, where no new discernable arguments were presented in the Examiner's Answer, Appellant has not added further responses, but relied on those presented in the Appeal Brief.

### **Section 112 Rejection**

Claims 93 and 97 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Appellant regards as the invention.

The Examiner continues to assert that the term "and/or" is self-contradictory and indefinite. More specifically, the Examiner is confused as to whether the meaning of claims 93 and 97 refer to "the processor to communicate and control" or "the processor to communicate or control", and interprets the claims as "or" instead of "and/or". Appellant respectfully submits that the phrase "the processor to communicate and/or control" means the processor can communicate, control, or communicate and control, and that simply reinterpreting the term "and/or" as "or" is inappropriate. Additionally, Appellant submits that the term "and/or" is well known by those of skill in the art and the idea of an inclusive or conjunction (which "and/or" is) is also well known. Thus, the term "and/or" has a well understood meaning, is not self-contradictory, and does not render the claims indefinite. Appellant also notes that Appellant attempted to clarify these claims (by amending the claims to specifically state the meaning explained above) in an amendment which the Examiner refused to enter.

### **Section 102 Rejection**

Claims 82-106 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Nagaoka et al. (hereinafter "Nagaoka", US Patent Publication 2002/0180579). Appellants

respectfully traverse this rejection for the following reasons. Different groups of claims are addressed under their respective subheadings.

**Claims 82, 83, 84, 85, 88, 89, 90, 105, and 106**

First, Appellant would like to address an important distinction between the present claims and Nagaoka. More specifically, claim 82 requires that a first device request that a second device access a traditional instrument. At the time of the request, the second device is not configured with the instrument driver which is required for communication with the traditional instrument. In response to this request, the second device automatically receives the instrument driver (based on the request) over a network and then communicates with the traditional instrument using the instrument driver.

Nagaoka, on the other hand, describes that driver software may be installed in response to manual user input (see paragraph [0254], provided by Appellant in Appeal Brief), which does not teach or suggest these features Appellant's claims, and also provides two cryptic paragraphs cited by the Examiner. The paragraphs in question ([0041] and [0045]) recite in pertinence:

Also, the present invention provides a method for remote control of home-located electronic devices wherein a management facility comprises driver software for the server for performing control of home-located electronic devices controlled by a server connected to the management facility via network; and the terminal transmits to the management facility, a request signal showing that the driver software is downloaded from the management facility by the server and an identifying signal; and the management facility transmits to the server corresponding to the identifying signal, the driver software corresponding to the request signal.

Appellant respectfully submits that the paragraph, if read literally, is self-contradictory since the request “[shows] that the driver software is downloaded”, and then the management facility transmits the driver to the same server in response to the request. Appellant interprets this paragraph as including a mistranslation of the phrase “requesting that the driver software be downloaded”, currently provided as “showing that the driver software is downloaded”. However, it is clear that the request identifies the server (with the identifying signal) and is a request to download the driver software (“the driver software corresponding to the request signal”). Thus, Appellant respectfully

submits that the paragraphs cited for this particular feature relate to the user manually choosing a driver for download (as described in paragraph [0254] explicitly) and does not correspond to the specific features of the claims outlined above.

Appellant notes that the Examiner attempts to address Appellant's concerns of ambiguity regarding this paragraph by citing paragraphs [0021], [0095], and [0111], which relate to control requests, control instructions, and status information requests, respectively. Appellant respectfully submits that these paragraphs describe specific types of requests which are separate from the driver requests of the cited paragraphs. Moreover, the cited paragraphs do not relate to the particular method of downloading drivers that is in question.

Additionally, the Examiner asserts that Appellant's cited paragraph [0254] identifies a second embodiment which is distinct from the cited paragraphs, which the Examiner labels "the first embodiment". With respect to this assertion, Appellant respectfully submits that the cited paragraphs are in the Summary section and are not labeled as a "first embodiment". Instead, the "First Embodiment" is labeled at the later paragraph [0078]. Additionally, the cited paragraphs are simply recitations of claims 20 and 24 and are not characterized as belonging to either the first or second embodiment. The only other paragraph in Nagaoka that describes driver software installation is the paragraph [0254] cited by Appellant. Thus, Appellant submits that the cited paragraphs [0041] and [0045] do not disclose the recited features of the claims and especially do not disclose these features when read in light of the further details provided by paragraph [0254].

#### **Claim 86**

Regarding claim 86, Nagaoka fails to disclose **wherein the user input that generates the request to access the traditional instrument is received by the web browser in a web page provided by the second device**. With respect to arguments presented in the Appeal Brief, the Examiner asserts:

Nagaoka teaches the terminal device having a World Wide Web browser to communicate with the home server in the home network. The user using the terminal requests status information via the web browser. The home server transmits to the terminal home-located electronic device categories for each

electronic device for which the terminal can choose status information or which device to remotely control. This information is presented to the terminal as HTML data (paragraphs [0007, 0086, 0111, 0141, 0170-0171, 0182]).

Appellant respectfully submits that the cited portions describe that the user may provide input to the terminal which is provided to the home network management facility 5. The home network management facility 5 then communicates with the home server and provides response data back to the terminal. Thus, the home server (which the Examiner relies on as the second device) does not provide the web page as required by claim 86.

#### **Claims 97, 98, and 99**

The Examiner asserts that it would have been obvious to perform the methods of claims 97, 98, and 99 based on the rejection of claim 93 above. Appellant respectfully submits that these claims are rejected as being anticipated by Nagaoka (under section 102). Accordingly, a rejection based on obviousness does not apply.

## **CONCLUSION**

For the foregoing reasons, it is submitted that the Examiner's rejection of the claims was erroneous, and reversal of the decision is respectfully requested.

The Commissioner is authorized to charge any fees that may be due to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5150-46100/JCH.

Respectfully submitted,

/Jeffrey C. Hood/

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